UNITED STATES D DISTRICT OF MA	STRICT COURT SUSSACHUSETTSUS
CRAIG DAVIS, as parent and natural guardian of ANDREW DAVIS,  Plaintiff,  -against-	) CIVIL ACTION ) No. 05-30011-MAP
CATAMOUNT DEVELOPMENT CORP., CATAMOUNT DEVELOPMENT CORP, d/b/a CATAMOUNT SKI AREA, Defendants	) ) ) . ) )

## PLAINTIFF'S CASE MANAGEMENT STATEMENT March 6, 2006

### A. Plaintiff's Discovery Motions To Be Filed

# 1. Motion to Compel further answers to deposition questions

At the deposition of William Gilbert held on February 27, 2006 Defendant's Counsel instructed William Gilbert, the general manager and part owner not to answer questions relating to his bias, motive and interest in the outcome of the litigation. Plaintiff intends to seek a court order compelling answers to the appropriate questions.

# 2. Motion to Compel Production of Accident Reports

At the deposition of Catamount Ski Area's custodian of Documents it was revealed that accident reports of other documents since December 1, 2003 had not been produced in response to the subpoena duces tecum. Plaintiff intends to seek a court order compelling production of other accident reports.

# 3. Motion to Compel Production of Photographs of Accident Site

Defendant is in possession of photographs of the accident site. Some photographs were taken by a corporate employee shortly after the accident, and others were taken in the summer of 2004. Defendant has claimed these photographs are "privileged". They were not produced

in response to the subpoena duces tecum, and no protective order was sought. In any event Plaintiff believes these photographs are relevant and are subject to production. Plaintiff intends to file a motion to compel production of the photographs.

### B. Discovery Problems/Issues

## 1. Delayed production of list of potential witnesses

Plaintiff requested in May, 2005 that Defendant produce any list of children participating in the Youth Racing Program that were there on the date of the accident (Plaintiff was in a Youth Racing Program Class when he was injured). Plaintiff asked William Gilbert the Catamount General Manager if there was a list of children who participated in the Youth Racing Program and he stated no such list existed. At the deposition of the Head of the Racing Program a list of approximately 100 children who participated in the program was produced (nearly 9 months after it was requested). Plaintiff will need time to contact potential witnesses.

2. Further depositions - Plaintiff would like to take the deposition of Richard Edwards, Catamount Vice President, who was identified at the February 27, 2006 deposition of William Gilbert as the person who took photographs of the accident site shortly after the accident. Plaintiff would also like to reserve the right to seek depositions of potential witnesses culled from the names of the participants in the Youth Racing Program.

#### 2. Failure to produce email

Although Catamount has computers and uses email, no email was produced in response to the discovery requests. Plaintiff is concerned that Defendant may not have made this email available to their defense counsel for the purpose of seeking responsive documents. Although Plaintiff has no information supporting the existence of responsive documents in the Defendant's email, Plaintiff's counsel would like to discuss this issue at the case management conference.

#### C. Potential Witnesses Re: Condition of Fence Post Prior to Accident

Defendant has not identified any witness in response to interrogatories or in response to the 30(b)6 deposition with actual knowledge of the condition of the fence post that Plaintiff collided with, prior to the accident, other than William Gilbert. Defendant should be precluded from submitting any surprise witnesses on this issue at trial.

Respectfully Submitted,

Craig Davis, as parent of Andrew Davis, Plaintiff

by his attorney,

March 6, 2006

Charles J. Ferris

500 Main Street

Great Barrington, MA 01230

413 528-8900

413-528-9132 facsimile

BBO # 565630

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45	47
correct?	104925AM 1 Q. Okay. Any other owners?
A. Correct.	MS. CARLEEN: Objection.
Q. Okay. Have you retained an expert to	THE WITNESS: My son Tom.
4 view the accident site?	Q. (BY MR. FERRIS) Okay. Have you had
MS. CARLEEN: Objection.	5 any education relating to ski area operation?
6 THE WITNESS: That's me. No, I	
7 have not.	173. CARLLEA. Object to the form.
8 Q. (BY MR. FERRIS) So at the current	THE WITNESS: Yeah. We have
9 time, neither Catamount nor its attorneys have	The second of th
10 retained a ski industry expert to participate in	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
11 this litigation?	Q. (BY MR. FERRIS) What kind of panels?
10 4640Au 12 A. That's correct.	11 A. All various, on all aspects of the
10-96-400AM 13 MS. CARLEEN: Objection.	10:50:20AM 12 ski industry.
Q. (BY MR. FERRIS) Now, what is your	Q. And so you attend these panels?
15 experience in the ski industry, Mr. Gilbert?	10:50:23AM 14 A. Yes.
	15 Q. Okay. And who withdrawn.
TO SACEETA. Object to the form,	16 Is there an organization that
The William I took over a siliali	17 runs these panel discussions?
Tork called Fallicatork	18 A. The National Ski Area Association, as
And their	- Ingland Bill Aled Association.
Dulle offe,	<b>Q.</b> When was the last one that you
Q. (BY MR. FERRIS) Which one did you	105048AM <b>21</b> attended?
10.46.05AM 22 build?	10.50.49AM 22 A. Two weeks ago.
A. Sterling Forest. And then in 1973	Q. And where was that?
10 ARTHAM 24 took over Catamount.	1050-57AM 24 A. Killington.
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(413) 499-0035	(413) 499-0035
46	48
1 Q. And when you say in 1973 you took	1 Q. What was the subject of that
10-Mazzam 2 over Catamount, did you purchase Catamount?	10:51:00AM 2 discussion?
10-48.24AM 3 A. That's correct.	MS. CARLEEN: Object to the form.
10-4824AM 4 Q. Did Sterling Forest close?	THE WITNESS: Terrain parks.
10:46 27AM 5 A. We sold Sterling Forest	TOSTITEMM 5 Q. (BY MR. FERRIS) For snowboarders?
10-48-3IJAM 6 Q. Okay.	MS. CARLEEN: Objection.
10.48.33AM 7 A back in 1970. And we gave up	7 THE WITNESS: Terrain parks are
8 operating the other two about the same time.	10-51:24AM 8 for skiers and snowboards.
9 Q. The other two? I have Fahnestock.	9 Q. (BY MR. FERRIS) Okay. Any other
10 What's the other one?	1051 29AM 10 education withdrawn.
10-48-46AA 11 A. Silvermine.	
10.48 52AM 12 Q. Where was Silvermine?	riave you had any other education,
MARSHAM 13 A. Bear Mountain, New York.	other than these semiannual panels, with respect to operating ski areas?
Q. Okay. And when you say we, do you	
15 have some partners that have been involved in	105150AM 14 A. I can't think of them. Most likely I 105153AM 15 have.
10-4904AN 16 these ventures with you?	
A. Don Edwards is my partner.	- The start you said you own a
18 Q. Is he a co-owner of Catamount?	17 percentage of Catamount Development Corp.?  1051588M 18 A. Yes.
1049-16Ak 19 A. Yes.	
1049 17AM 20 Q. And	That percent do you own:
194820AAA 21 A. Richard is his son.	MS. CARLEEN: Objection. This is
22 Q. Yes. I understand that. Is Richard	10.5222AW 21 not relevant.
10-48 254M 23 Edwards a co-owner as well?	MR. FERRIS: It relates to his
1049.26AM 24 A. Yes.	motivation and credibility.
DAVIS & MITCHELL	MS. CARLEEN: Objection. I think
(413) 499-0035	DAVIS & MITCHELL
03/02/2006 07:11:19 AM Page 45 to	(413) 499-0035
rage 43 to	12 of 37 sheets

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<b>*.</b>	12 10 3:05-cv-30011-MAP Docume	ent 1/	Filed 03/06/2006 Page 5 of 10
	49		51
	ks completely irrelevant and I object to this	ID 54:36AM 1	you're comfortable answering, that's fine.
Á	Jine of questioning.	10 54:39AM 2	Q. (BY MR. FERRIS) Do you receive a
	Q. (BY MR. FERRIS) You can answer.	10.54 39AM <b>3</b>	salary?
A	A. I think she answered.	10:54:41AM 4	MS. CARLEEN: Same instruction.
5	Q. No. She I haven't heard your	10:54:42AM 5	MR. FERRIS: So I'm not entitled
6	attorney direct you not to answer, and I would	10:54 44AM <b>6</b>	to know whether your witness is paid as a paid
7	just cite Rule 30, which states that a person may	10:54:47AM <b>7</b>	employee of Catamount Development Corporation?
10.52 7845	instruct the deponent not to answer only when	10:54:48AM 8	MS. CARLEEN: What are you trying
10 52:37AM 0	necessary to preserve a privilege, enforce a	10:54:49AM 9	to get here, how much his salary is?
10 52 42AM 10	limitation directed by the Court, or to present a	10.54 52AM 10	MR. FERRIS: I'm asking
4.4	motion under Rule 30(d)(4). So I don't believe	10.54.53AM 11	questions
10-52-48AM 12	that she's telling you not to answer.	10.54 53AM 12	MS. CARLEEN: You're asking
42	MS. CARLEEN: Could you repeat	10:54:54AM 12	phrase your question with regard to Catamount.
1	the question or read back the question, please?	10:54:54AM 13	
0:52:54AM 14	•	l	Does he get paid by Catamount, is that what
0:52:56AM /15	Q. (BY MR. FERRIS) What percentage of	10:54:58AM 15	you're asking? I don't know what you're asking.
0 S2:57AM 116	Catamount Development Corporation do you own?	10:55.01AM 16	Q. (BY MR. FERRIS) Well, do you receive
17 мако-ке п	MS. CARLEEN: Yeah. I'm going to	17	a salary from Catamount Development Corporation?
0 53:04AM 18	instruct him not to answer that question.	0 55 DBAM 18	MS. CARLEEN: You can answer that
0 53:16AM 19	Q. (BY MR. FERRIS) What percentage of	0 55:06AM 19	yes or no.
0:53:17AM 20	Catamount Development Corporation does your son	0:55 07AM 20	THE WITNESS: Yes.
0:53:19AN 21	own?	D.55.08AM 21	Q. (BY MR. FERRIS) Do you receive a
0 53:21AM 22	MS. CARLEEN: Same instruction.	D:55.09AM 22	salary from any other business entities?
0:53.2644 23	<b>Q.</b> (BY MR. FERRIS) What is your salary	0:55:15AM 23	MS. CARLEEN: Objection.
0.53.29AM <b>24</b>	at Catamount Development Corporation?	0.55:17AM 24	THE WITNESS: No.
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W. F	50	Í	52
0:53.30AM	MS. CARLEEN: Same instruction.	10:55:18AM 1	Q. (BY MR. FERRIS) Okay. Are there
D-53-32AM 2	It's completely irrelevant and it's being asked	10:65:18AM 2	any other business entities or organizations
0:53:25AM <b>3</b>	to harass.	10:55:21AM 3	involved in the operation of Catamount
0:53:3 <b>5</b> AM 4	MR. FERRIS: It is most	10.55:24AM 4	Development Corporation?
0:53:37AM <b>5</b>	definitely not being asked to harass. I have no	10:55 24AM 5	A. No.
0 53:40AM 6	particular interest in this, other than trying to	10:55:25AM 6	Q. Okay. So you do receive a salary but
0°53 42AM 7	determine what the credibility of this witness	10:55:29AM 7	you will not state what that salary is, is that
0:53 SAM 8	is.	10:55:31AM 8	correct?
0:53 SAM 9	MS. CARLEEN: But the type of	10:55:31AM 9	A. That's correct.
0:53 46AM 10	answer you're trying to evoke would create more	10:55 32AM 10	MS. CARLEEN: Correct.
0:53:Jann 11	prejudice than anything probative here, so I am	10.55.33AH 11	MR. FERRIS: Okay.
0:53:91AM 12	instructing him not to answer the question.	10:55:01AM 12	Q. (BY MR. FERRIS) Does your son also
0 53:SHAM 13	That's my position, absent a court order.	10:56:02AM 13	receive a salary?
0.53.53AM 14	MR. FERRIS: Okay. I'll need	10.56.04AM 14	MS. CARLEEN: Same objection.
0.54 11 AM 15	that part of the transcript, also.	10:56:08AM 15	Q. (BY MR. FERRIS) Does he receive a
0.54.21AM 16	Q. (BY MR. FERRIS) In addition to	10:56:08AM 15	salary?
0:54.22AM 17	receiving a salary, do you share in the income of	10:56:08AM 17	A. Yes.
0:5425AM\18	Catamount Development Corporation?	10:56:09AM 17	_
0.5425AM 19	MS. CARLEEN: Same instruction.	10:56:26AM 19	Q. Okay. Now, in addition to fencing
0:54:28AM 20	THE WITNESS: No.		that's attached to wooden posts, does Catamount
0.54:28AM 20		10:56:30AM 20	use any fencing that's attached to any break-away
22	<b>Q.</b> (BY MR. FERRIS) You don't share in the income of Catamount Development Corporation?	10:56:34AM 21	or flexible posts?
0:54:34AM 23		10:56:36AM 22	MS. CARLEEN: Object to the form.
C_ MARE: PG:0	THE WITNESS: I'm sorry?	10 56.39AM 23	THE WITNESS: Yes.

3:54 35AM 24

10.58:40AM **24** 

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MS. CARLEEN: That's fine. If

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(413) 499-0035

Q. (BY MR. FERRIS) Okay. What are the

know that there are photographs so let me change that question, please.

Q. (BY MR. FERRIS) Has Catamount created any drawings, diagrams or maps of the accident site, either before or after the accident, other than the trail maps that are regularly in use?

MS. CARLEEN: Same objection. Go ahead.

THE WITNESS: No.

- Q. (BY MR. FERRIS) Does Catamount have copies of documents containing the names, addresses and/or telephone numbers of other children participating in the ski class that Plaintiff was a part of at the time of the accident?
  - A. No.

- Q. So there are no documents as to the names and addresses of the children who participate in the racing program at Catamount?
  - A. That's correct.

MS. CARLEEN: Charles, could you just clarify your question? Are you asking about names and addresses with respect to this

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		desena5@aol.com	-	10		2578 845-266-3987 Interclub	2578 845-	NY	Salt Point	98 Clinton Corners Road	William	De Sena	
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ck dad ski inst.		jillc@bestweb.net	\$197.50	11		12582 845-221-0375 Tri-State	12582 845-	NY	Stormville	310 Judith Drive	las		11/19/03 Choma
ck dad ski inst.	Return	jillc@bestweb.net	\$197.50	8	<u> </u>	12582 845-221-0375 Tri-State	12582 845	٧	Stormville	310 Judith Drive	Christie	Choma	11/19/03 Choma
8			\$250.00	12		Ra	12503	NY	Ancramdale	PO Box 7000	Gabriel	Chaleff	12/28/03 Chaleff
8	new		\$250.00	17		06897 203-762-1235 Racecamp	06897 203	CT	Wilton	84 Keelers Ridge Rd	Billy		12/22/03 Budd
CK mom is ski inst.	Retum	6833 \$197.50 royboy@valstar.net	7-6833 \$197.50	15 518-537-	<u> </u>	12526 518-537-6833 Tri-State	12526 518	Z,	Germantown	281 East Camp Rd.	Collin	Brown	11/13/03 Brown
S	New		5-4143 \$395.00	11 518-325	<b>F</b>	10128 212-369-3371 Interclub	10128 212	NY	New York	70 E. 96 St.	Zachary	1/3/03 Brookman	11/3/03
		daniel.boucher@snet.net	6680	16 914-282	Н	06877 203-431-3757 Camp	06877 203	СТ	Ridgefield	179 lvy Hill Road	Katie	Boucher	
Ö.		\$425.00 yanbooth@aot.com	0648	14 518-392	L.	12037 203-431-3783 Tri-State	12037 203	NY	Chatham	16 Scannell Rd	Yan Nicholas	Booth	10/6/03 Booth
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CC	Return	<b>)</b>	\$425.00	14	_	12567 518-398-0440 Tri-State	12567 518	NY	Pine Plains	PO Box 763	Sam	0/31/03 Augustine	10/31/0
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PO Box 793	1102-A Bedford Bd	1102-A Redford Bd	21 Bookledge Drive	122 Van Bael Drive	7 Gracie Sn Ant #9	1 West 85th St; 6B	1 West 85th St; 6B	8 E. 96th St	12 Hewlett Ln.	40 East 84th St; #17-A	40 East 84th St; #17-A	393 West Broadway	393 West Broadway	393 West Broadway	11 Whitson St	1230 Park Ave #3D	800 Tuckahoe Rd.	482 Under Mountain Ad	40 W. 77th St. # 10B	40 W. 77th St. # 10B	55 Old Town Road	253 Carpenter Road	7 Peters Lane	14 Konig Road	116 Fifth Ave. Apt. 302	116 Fifth Ave. Apt. 302	116 Fifth Ave. Apt. 302	2385 State Rte,82	901 Rte 25	50 Birch Dr.	106 Picketts Ridge Rd.	8 Puddlers Lane		P.O. Box 007	P.O. Box 007	17 Old C.N.E Rd.	17 Old C.N.E Rd.	17 Old C.N.E Rd.	17 Wier Farm Lane	20 Robin Rd	- 000000
Lichfield	Plainville	Plainville	Brewster	Slingerlands	New York	New York	New York	New York	Port Washington NY	New York	New York	New York	New York	New York	Forest Hills	New York	Yonkers	Salisbury	New York	New York	Hillsdale	Ghent	Bedford	Ghent	New York	New York	New York	Ancram	Stuvvesant Falls	Rosívn	Redding	Falls Village		Millbrook	Millbrook	Lakeville	Lakeville	Lakeville	Ridgefield	Kinderhook	***************************************
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